

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

| | | |
|---------------------------------|---|-------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| DANIELLE M. RIGGINS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| and |) |)Charge No: 2002CE1169 |
| |) |)EEOC No: 210A20289 |
| |) |) ALS No: 11947 |
| VILLAGE OF CALUMET PARK, |) | |
| |) | |
| Respondent. |) | |

RECOMMENDED ORDER AND DECISION

On October 22, 2001, Complainant filed a Charge with the Illinois Department of Human Rights (Department), perfected on January 18, 2002, alleging Respondent discriminated against her on the bases of sexual harassment and constructive discharge. Based on the Charge, the Department filed a Complaint on behalf of Complainant with the Illinois Human Rights Commission (Commission) on November 22, 2002. A public hearing on the merits was held March 2, 3, and 11, 2004. This matter is ready for decision.

FINDINGS OF FACT

The following facts were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing that are not addressed herein were determined to be unproven or immaterial to this decision.

1. Respondent is the Village of Calumet Park (Village), a municipal corporation with various sub-departments, one of which is the Department of Recreation. The recreation department provides physical education and social activities for the village youth and employment opportunities to area teenagers. The recreation department operates a recreation center and a swimming pool (pool). The

recreation center is in a separate building and is at a separate location approximately eight blocks from the pool. The pool consists of two swimming pools, a concession area and a pool office. The pool is located approximately 5-6 blocks from the Village police department/Village hall and the recreation center is located approximately two blocks from the Village police department. The Village hall and Village police department are housed in the same building referred to as the municipal complex.

2. Complainant was born February 18, 1982 and is 19 years old at the time of the alleged harassment on June 11, 2001. Complainant lives in the Village with her mother and her home is approximately five blocks from the pool area and five blocks from the recreation center.
3. Frank Snow (Snow) was 60 years old in 2001. He has been married to Mary Snow (Mary) for 43 years. He was appointed as Trustee of Calumet Park in 1987 and served in this capacity until 1997. He has been Tax Collector for Calumet Township since 1997, an elected position. The Mayor of Calumet Park appointed Snow as Director of Recreation on September 11, 1997 and the Village Board of Trustees approved the appointment. Snow currently remains in that position. As Director of Recreation, Snow's duties include setting up programs to keep children busy, budgeting and managing personnel matters. Snow has authority to discharge and discipline employees and shares authority to hire with the Village trustees.
4. Snow hires between 40-63 young people to work in the summer. Snow first hired Complainant in the position of pool attendant in the summer of 1997. Snow rehired Complainant as a pool attendant in the summers of 1998 and 2001. Snow considered Complainant a good worker. Complainant made \$4.75 hour in 1997, \$5:15 hour in 1998, and \$6.00 per hour in 2001.

5. As a pool attendant, Complainant worked at the recreation center, at the pool concession stand, collected money at the front gate at the pool, cleaned up the bathrooms and performed other duties involved with the maintenance and operation of the pool and the recreation center.
6. The pool area consists of two pools, a concession area with no windows and a pool office with windows on one side that look over the pools.
7. Valarie Freeman (Freeman or aunt) is Complainant's aunt and is the office manager of the recreation center. Freeman was the office manager in 1997 when Snow became the Director of Recreation and Snow kept her on in that position.
8. Although most of the summer employees began work between 10:00 a.m.-11:00 a.m., Snow allowed Complainant to start working at 8:00 a.m. so that she could arrive to work with her aunt, Freeman, who started work earlier than the summer employees.
9. John Rigony is a detective for the Village police department.
10. Complainant's mother, Karen Riggins (Karen) worked for the Village in the recreation center as an after school child care provider from September 1996 until June 21, 1997. Snow discharged Karen in June 1997. Karen had filed a sexual harassment complaint against the former director of the recreation department. That case was dismissed.
11. Complainant's first day as a pool attendant in the summer of 2001 was on June 5, 2001. On June 7, 2001, Snow observed that Complainant and Xania (also referred to as Asanya in the transcript of these proceedings), another female pool worker, had finished eating lunch and were talking. Snow felt that they were not working at their assignments and ordered Derrick Scarborough (Derrick), a supervisor, to direct them to clock out early for the day. Derrick drove Complainant and Xania from the pool back to the recreation center for the two to

- clock out on their time cards. Complainant however clocked out at her regular time and did not clock out early. Complainant did not go home and remained in the office of the recreation center with her aunt, who was there working. Later, Snow observed Complainant in the office and asked her if she knew why he had ordered her to clock out and Complainant responded, “ I don’t. I worked my fucking ass off.”
12. Snow and Mary have been married for 43 years and have two children—a son age 35 and a daughter age 24. Mary has worked for the recreation department for 4-5 years and has an office in the recreation department building. Mary describes her duties and responsibilities as a “go-for.” (The phrase “go-for” commonly refers to a worker who performs non-specific, varied job duties as needed.)
13. On June 7, 2001, Mary was in the recreation center office along with Freeman, who was sitting at her desk, when Mary heard Complainant comment that she works her “ass off and Snow knows that.”
14. Complainant arrived to work on Monday, June 11, 2001, wearing a baseball cap with a “Verizon Wireless” insignia inscribed on it. Complainant had received the cap for participating in a community service project cleaning up the city of Chicago over the past weekend. Mary observed Complainant in the recreation center wearing a hat and asked her to remove her hat. Complainant did not remove her hat and responded that she was going out to the pool. Mary did not pursue the matter.
15. A posted sign in the recreation center and the written policy of the Calumet Park Recreation Center Rules & Regulations for Premises, respectively read at Number 4, “Headgear is not to be worn inside the building, including scarves,

hats, caps, doorags, etc.” There is no reference that this rule or any of the rules listed apply only to boys or males.

16. Complainant was hostile to and rejected the authority of Mary and Snow.
17. On June 11, 2001, Complainant clocked in her time card at 8:00 a.m. in the recreation center and was informed by Snow that he wanted her to run some errands with him later on. In the meantime, Complainant proceeded with her regular chores cleaning the boys' and girls' washrooms and straightening up the television room. At 11:00 a.m., Snow came into the recreation center to summon Complainant. Snow drove and Complainant rode with him in a car to run errands for the recreation department. They first stopped at Sam's Club, a warehouse food and merchandise store, where they purchased a round sandwich, a birthday cake and ice cream for the pool. They left Sam's Club and went to Walgreen's, a retail drug store. Snow went inside to make a purchase, while Complainant stayed in the car. After they left Walgreen's, Snow drove to the pool area and unlocked a gate and the door to the concession area to allow Complainant to put ice cream into the freezer in the concession stand. The concession area has no windows. Snow did not go inside the concession area with Complainant. Complainant took the ice cream out of the trunk and went to the concession stand to put the ice cream in the freezer. Complainant made two trips to the car and back to the concession stand.
18. While Complainant was putting the ice cream in the freezer, Snow went to the pool office to make telephone calls. After Complainant finished putting the ice cream in the freezer, she went into the pool office where Snow was standing at a desk making telephone calls. Complainant sat down and Snow asked if she wanted to listen to the radio. Complainant responded “yes” and Snow walked to a black box on the wall that held the radio, turned to a station, asked

Complainant if that particular station was acceptable to her and Complainant agreed that it was. Snow questioned Complainant about a recent graduation prom she had attended. Complainant got very upset about Snow's questions about the prom and went to sit in the car and wait for Snow. Snow came to the car and told Complainant that he was "just playing," referring to the questions about the prom and drove with Complainant to the Village hall/police department to retrieve his mail. Snow went into the building while Complainant stayed in the car. Snow then drove to the recreation center, handed Complainant the mail and asked her to give it to Freeman. Snow then walked over to the baseball diamond to attend to some of his workers who were cutting grass there. Subsequently, Snow left the area.

19. Snow did not touch Complainant's breast, pinch her nipple or tell her that he wanted to "bone" her while the two were in the pool office.
20. The pool office is a small office. There is an entry door leading to a small hallway and windows looking out over the pool area. The furnishings include a rather large brown desk in the middle of the office, a chair, a large black cabinet approximately the height of the desk located against the far wall parallel to the desk, and a smaller black cabinet located on the far wall just to the right of the large black cabinet and also parallel to the desk. Above the smaller black cabinet attached to the adjacent wall is a black box that houses a radio and that has a public address microphone attached to the outside right side. To the right of the black box on that same wall is a blue door leading to the boys' locker room.
21. Complainant went into the recreation center and confided in her aunt that she was upset with Snow. Complainant and Freeman waited for about two hours and observed Snow's car pull in the driveway. Snow exited the car and walked to the

baseball diamond. Complainant and Freeman approached and confronted Snow and Snow replied that he was “just playing” just like he plays with “Shannon, Nicole and Wanda.” Complainant responded “I am not Shannon, Nicole or Wanda. I’m Danielle.” Snow then put his hands up and walked away. When Snow said he was “just playing”, he was referring to the conversation he had with Complainant about the prom.

22. Karen received a telephone call from Complainant between 1:00 p.m.-2:00 p.m. on June 11, 2001. At the time, Karen was shopping in a grocery store with her mother. After talking with Complainant, Karen advised Complainant to go to the police department. Complainant walked to the police department and spoke with a police officer and then to Detective Rigoni, who interviewed Complainant. Rigoni later interviewed Snow, Karen and several other workers at the Village.
23. After talking with Complainant by telephone, Karen completed her purchase at the grocery store and picked up Complainant from Complainant’s grandparent’s house in the village and they drove to the recreation center. There, they saw Mary just outside of the recreation center and asked her to go back in the recreation center to talk. All three went into a back room at the recreation center and Complainant and Karen confronted Mary with Complainant’s allegations of Snow. Mary began crying and hugged Complainant and Karen.
24. Nicole Hudson (Hudson) was between 18-19 years old in 2001 and lives in the Village. Hudson was hired as a day camp counselor for the recreation center during the summer of 1997 and was rehired again in the summer of 1998 as an attendant. She remained working for the recreation department after the end of the summer. Snow promoted Hudson to the position of supervisor over the other attendants in August 1999. She worked at the pool when she completed her duties at the day camp during 1998, 1999 and up until the pool closed in 2001.

Snow never touched Hudson or made her feel uncomfortable in any way and, other than the current allegations by Complainant, Hudson is not aware of any other incidents of Snow having touched any other workers or visitors.

CONCLUSIONS OF LAW

1. Complainant is an “employee” as that term is defined under the Act.
2. Respondent is an “employer” as that term is defined under the Act.
3. Complainant has failed to establish a case of sexual harassment in that Complainant failed to prove by a preponderance of the evidence that Respondent engaged in “unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature” toward her for purposes of Section 2-101(E) of the Act.

DETERMINATION

Complainant has failed to provide sufficient credible evidence to demonstrate by a preponderance that Respondent engaged in sexual conduct toward her.

DISCUSSION

Complainant alleges that on June 11, 2001, while she and Snow were in the pool office, Snow touched her breast and pinched her nipple and told Complainant that he wanted to “bone” her. Complainant understood this comment to mean Snow wanted to have sex with her. Complainant alleges that this conduct was unwanted, unwelcome, offensive and that it created a hostile environment such that she had no option but to resign.

Sexual Harassment Claim

Complainant’s claim for sexual harassment stems from Section 2-102(D) of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq., which provides in part that it is a civil rights violation for any employer, employee, agent of any employer... “ to engage in sexual harassment; provided, that an employer shall be responsible for sexual

harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures." The Act at Section 5/2-101(E) defines sexual harassment as "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when ...(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

There is no "bright line" test for determining what behavior will lead to liability under a sexual harassment theory. A determination must include an assessment not only of what was done, but how it was done in relationship to the total working environment. **Robinson v. Jewel Food Stores**, 29 Ill. Rep. 198, 204 (1986). Since unwanted sexual advances or requests for sexual favors are specifically mentioned in the Act, clearly evidence of the specific conduct alleged by Complainant would rise to the level of actionable harassment leading to liability under this theory. **Scott v. Sears, Roebuck & Co.**, 798 F.2d 210 (7th Cir. 1986). However, I must first determine what actually happened in the workplace, for credibility determinations are typically at the heart of any sexual harassment case. **Camden and AAA-Chicago Motor Club**, 26 Ill. HRC Rep. 2 (1986). As there were no third party witnesses to the alleged harassing conduct purported to have taken place on June 11, 2001, the outcome of this matter largely depends on the credibility of the party witnesses to the actual conduct and to a lesser extent on the credibility of third party witnesses as to the post-incident conduct of the parties.

A proper discussion of the facts of this case includes an analysis of two separate relevant events that took place prior to the alleged harassing conduct on June 11, 2001. One event took place on June 7, 2001, and the other took place the morning of June 11, 2001, just prior to the alleged harassing conduct.

June 7, 2001

Snow's and Complainant's respective versions of the events that took place on June 7, 2001, do not significantly differ up to a point. On that day, both Parties agree that Snow, Derrick, Xania, Complainant and other recreation center employees worked on an assignment to pick up some donated chairs from an outside contributor and bring them back to the recreation center. The workers brought the chairs back to the recreation center and then Snow, Derrick, Xania and Complainant rode to the pool area. At that time, the swimming pool had not yet opened for the summer season. Some workers were attempting to cut the grass around the pool area and Snow began assisting them with a malfunctioning lawn mower. Snow observed Danielle and Xania eating lunch in the pool area. After between 45 minutes and one hour, Snow noticed that Complainant and Xania had finished eating and were talking. Snow felt that they were not working and ordered Derrick to get them off the clock. Derrick went to the ladies, informed them of his directive from Snow and drove them back to the recreation center to clock out for the day. Later that day, Snow encountered Complainant in the recreation center office where Freeman works and Snow asked Complainant if she knew why he had asked her to clock out.

After this, the Parties' respective versions contrast. Complainant testified that Snow told her that she worked "good" today and that Xania was not working well, but he could not have Xania clock out without having Complainant also clock out because that would not have been fair. Complainant also testified that, although she was directed to clock out early, she did not clock out early, she clocked out at her regular time. Snow

denies that he commended Complainant for performing well that day. Snow testified that after asking Complainant the question, she replied in a loud voice, "I don't – I worked my fucking ass off."

Mary essentially corroborates Snow's version of Complainant's remark. Mary testified that, on June 7, 2001, she observed Complainant, who appeared to be upset, in Freeman's office and heard Complainant make a statement that she worked her "ass off and Snow knows that." Mary Snow testified that prior to that incident, she did not know Complainant personally.

According to Mary and Complainant, the only other occurrence witness to this event is Freeman, who I did not hear from at the public hearing. I give Snow's version of this occurrence more weight in light of Mary's corroboration that Complainant appeared to be upset with Snow and that Complainant made a statement demonstrating that she felt she had been working hard and had been treated unfavorably by Snow when he directed that she clock out early. I also considered that, although Complainant was aware that Snow had directed her to clock out early, Complainant admitted that she did not clock out early. Complainant's deliberate defiance of Snow's directive that she clock out early indicates that she was upset with Snow's decision. I further considered possible bias in Mary's testimony because of her relationship to Snow; however, I found her testimony to be detailed, forthcoming and thus, credible.

June 11, 2001- morning incident

Complainant testified that she arrived to work on Monday, June 11, 2001, wearing a baseball cap with a "Verizon Wireless" insignia inscribed on it. Complainant had received the cap for participating in a community service project cleaning up Chicago over the past weekend. Complainant testified that Mary commented to her that she had a hat on in the building, to which Complainant responded to Mary that the rule against wearing hats in the building only applied to boys and then pointed to a posted

sign that supposedly indicated that the rule proscribing the wearing of hats in the building only applied to males.

Mary's version of this occurrence differs significantly. Mary testified that she observed Complainant in the recreation center wearing a hat and asked Complainant if she would remove her hat. Complainant responded that she was going out to the pool and did not remove her hat. Mary did not pursue the matter. Mary further testified that Complainant did not comment to her that the hat restriction only applied to males and that Complainant did not point to a sign to advise her as such. Mary testified as to Respondent's Exhibits 6A and 6B, a photograph of a posted sign in the recreation center and a copy of the written policy of the Calumet Park Recreation Center Rules & Regulations for Premises, respectively. Rule Number 4 of that policy, which is the only rule posted referring to hats, states "Headgear is not to be worn inside the building, including scarves, hats, caps, doorags, etc." I note that there is no reference that this rule or any of the rules listed in the posted sign applied only to boys or males.

The evidence as to this occurrence shows that Complainant's testimony again lacks credibility. Complainant testified that she pointed out to Mary the language in the posted sign indicating that the proscription against the wearing of hats in the recreation center only applied to males; however, Respondent's Exhibit 6A, a picture of the posted Rules and Regulations sign to which Complainant pointed, clearly shows that there is no such language on the sign indicating that this rule or any other rules only applied to boys or males.

Complainant's behavior in failing to clock out early when ordered to do so by Snow and failing to remove her hat when asked to do so by Mary, supports that Complainant was hostile to and rejected the authority of Mary and Snow.

June 11, 2001- alleged harassment incident

The previous two incidences lead this analysis to the operative alleged harassing occurrence. As to this, Complainant's and Snow's respective recitations as to what happened in the late morning, early afternoon of June 11, 2001, were largely consistent as to the following facts. Complainant clocked in at 8:00 a.m. in the recreation center and was informed by Snow that he wanted her to run some errands with him later on. In the meantime, Complainant proceeded with her regular chores cleaning the boys' and girls' washrooms and straightening up the television room. Around 11:00 a.m., Snow came into the recreation center and summoned Complainant to assist with the errands. Complainant went with Snow in a car (the record is unclear as to whether the car was Snow's personal car or the Village's municipal car) to run errands for the recreation department. They first stopped at Sam's Club, a warehouse food and merchandise store, where they purchased a round sandwich, a birthday cake and ice cream for the pool. They left Sam's Club and went to Walgreen's, a retail drug store. Snow went inside to make a purchase, while Complainant stayed in the car. After they left Walgreen's, Snow drove to the pool area and unlocked a gate to the pool area. Complainant took the ice cream out of the car trunk and went to the concession stand to put the ice cream in the freezer. Snow went with Complainant and unlocked the door to the concession stand, but Snow did not go into the concession stand with Complainant. Snow then went to the pool office to make telephone calls. After Complainant finished putting the ice cream in the freezer, she went into the pool office where Snow was standing at a desk making telephone calls. Complainant sat down and Snow asked if she wanted to listen to the radio. Complainant responded "yes" and Snow walked to a black box on the wall that held the radio, turned to a station, asked Complainant if that particular station was acceptable to her and Complainant agreed that it was.

After this recitation, Complainant's and Snow's respective versions of the events that took place in the pool office significantly differ. Complainant testified that, after turning to the radio station, Snow reached down, grabbed her right breast and pinched the nipple, walked back over to the desk and said "Danielle, it's a shame that you tell all of your business because I would like to bone you." Complainant understood the words "bone you" to mean Snow wanted to have sex with her. Complainant threw her hands up and said "Mr. Snow, that's not right." Complainant got up, walked out of the pool office back to the car and sat down in the car. Snow walked to the car and told Complainant, "I was just playing, I was just playing."

Snow denies these allegations in their totality. Snow testified that he was aware that Complainant had recently attended her senior prom for her high school and -- while they both were in the pool office -- he asked Complainant whether the prom was a two-day prom or a one-day prom. Snow maintains that it appeared that Complainant became upset when he asked questions about the prom.

Both Parties then agree that after leaving the pool office, Snow drove with Complainant to the police station/Village hall building. Snow got out of the car and went inside to retrieve his mail. Snow came back to the car and drove back to the recreation center. Complainant proceeded to get the remainder of the merchandise out of the car trunk and went in to the recreation center to put the merchandise in the television room.

Complainant's testimony is that she next went into the office to tell her aunt about the alleged touching incident with Snow. Freeman was on the telephone, so Complainant wrote a note on the calendar, indicating that she needed to speak to her aunt immediately. Freeman followed Complainant into the girls' bathroom. Complainant told Freeman her version of what had happened with Snow in the pool office and told her that she quit and she wanted to telephone her father. By that time, Snow had left the recreation center. She and Freeman waited for around two hours for Snow to come back

to confront him. Complainant and Freeman observed Snow's car arrive and saw him walk toward the baseball diamond.

Next, Complainant and Snow both agree that Complainant and Freeman walked out to the baseball diamond and confronted Snow, who responded that he was "just playing" and that he plays with Shannon, Nicole and Wanda. Complainant told Snow that she was not Shannon, Nicole or Wanda, that she is Danielle." Snow threw up his hands and walked away.

Complainant testified that she then went back into the recreation center, telephoned her mother and received advice. Complainant then went to the police station and filed a report. She then left and went to her grandmother's house. There, she telephoned her mother to inform her that she was now at her grandmother's house. Complainant's mother picked up Complainant from her grandmother's house and they both went back to the recreation center where they confronted Mary and told her about the alleged touching incident. Mary began to cry, hugged Complainant and Karen and told them she was sorry Snow had touched Complainant.

Snow testified that he arrived with Complainant to the recreation center and observed that the maintenance employees were cutting grass by the baseball field near the recreation center, so he proceeded to the baseball field to assist them. He gave Complainant the mail and asked her to give it to Freeman and Complainant went inside the recreation center. While on the baseball field, Freeman approached him alone and told him she wanted to speak to him. Freeman told Snow that Complainant was upset at something he had said, and he replied that he had only asked her about her prom and that he was kidding just like he kids with Shannon, Nicole and Wanda. At that time, Complainant approached him and said, "I'm not Nicole; I'm not Wanda; I'm not Shannon." Complainant then began swearing and Snow told her that he would talk to her later.

As I indicated earlier, credibility determinations are at the heart of this issue. When analyzing the credibility of the party witnesses, I conclude that Complainant's memory lapses throughout her hearing testimony negatively affect her credibility. The most critical lapse concerns her uncertainty of the positioning of the furniture in the pool office at the time of the alleged occurrence. By all accounts, the pool office was small. Because Complainant worked as a pool worker for three summers in 1997, 1998 and 2001, the reasonable inference is that she was familiar with the pool office and its furniture.

However, when presented with Respondent's Exhibits 4A and 4B, purported to be an accurate picture of the pool office as it was in June 2001, Complainant initially testified that the pictures accurately represented how the pool office looked on June 11, 2001, but later, when shown Respondent's Exhibit 4C — a picture of the pool office which shows a better view of the two separate black cabinets — Complainant could not remember if the small black cabinet was in the pool office on June 11, 2001. Adding to her uncertainty was her testimony on re-cross examination that the picture in Respondent's Exhibit 4A "is not right."

I considered that Snow took the exhibit pictures just days prior to the public hearing, which hearing was approximately three years following the alleged occurrence. Because of the enormous time lapse, and in spite of testimony by Snow and Hudson to the contrary, it is not unreasonable to expect that furniture may have been added, removed or relocated inside the pool office. What discredits Complainant's testimony is that she totally failed to explain her version of any specific discrepancies in the positioning of the furniture in the pool office exhibits.

Moreover, Hudson credibly testified that the furniture in the pool office was situated in 2001 exactly as it was depicted in the pictures designated as Respondent's

Exhibits 4A and 4F and that both black cabinets were in the office during the summer of 2001. Hudson said that both black cabinets have always been in the pool office since her initial employment in 1997 and that the small black cabinet was used to store first aid materials and pool chemicals. Hudson also expressed that the furniture positioning had little chance of having been moved in a different position. Hudson testified, "There is no other way you can really position the desk because it is like a small area of a room. Only thing you can do is maybe push it over a little bit. The desk is so big."

Another critical memory lapse was demonstrated by Complainant's testimony as to the positioning of the chair she was sitting in at the time of the alleged occurrence. Complainant first testified that the chair she was sitting in at the time of the occurrence was situated *between* the door and the black box, which housed the radio. Later, she testified that the chair she was sitting in was directly in front of and *blocking* the door.

Complainant's failure to offer emphatic testimony as to whether the small black cabinet was in the office or as to the positioning of the chair and the other furnishings at the time of the alleged touching severely shrouds her credibility. Equally undermining Complainant's credibility is that she was unsure which hand Snow used to allegedly grab her breast and pinch her nipple while she was seated in the chair. Likewise, she failed to recall a description of the vehicle she rode in with Snow the day of June 11, 2001. Complainant testified that she rode with Snow in a car to Sam's, then to Walgreen's, then back to the pool office, where she made two trips to the car to unload ice cream; she then returned to sit in the car after the alleged touching, then she rode with Snow to the Village hall/police station, after which she rode with him back to the recreation center, where she consulted with her aunt. She and her aunt then waited for Snow to return to the recreation center and both observed Snow's car pull up and Snow exit the car and walk to the baseball diamond. This chronology of events reveals that Complainant had several opportunities for physical and visual contact with Snow's car

on June 11, 2001, and I find a memory lapse as to any description whatsoever of Snow's car to render her testimony disingenuous.

Furthermore, the behavior of Complainant and Snow immediately following the alleged incident is inconsistent with reasonable behavior under the circumstances. Complainant and Snow both testified that immediately after leaving the pool office, Snow drove with Complainant to the Village municipal complex, which houses the Village hall and the Village police station, in order to pick up his mail. Snow went into the building while Complainant remained in the car. While it is reasonable and understandable that Complainant may have been too scared or shaken to go into the police station to report Snow at that time while he was present, what is incomprehensible is that Snow would drive with Complainant to the police station immediately after having engaged in this alleged unwanted touching of Complainant's breast. Complainant's behavior after the alleged touching also defies reasonableness. With the pool area being only a mile from the recreation center where Complainant's aunt was working and only five blocks from Complainant's own home, and although — according to Complainant — "it was hot that day," Complainant, a youthful 19 year old, chose to get back into Snow's car and wait for him, rather than take steps to immediately distance herself from him by walking the few blocks to familiarity in order to summon help.

The evidence supports the conclusion that Complainant was hostile to and rejected the authority of Mary and Snow and that this hostility spawned a desire for vengeance. The evidence on this record supports that it is highly improbable that Snow engaged in the specific conduct described by Complainant.

Constructive Discharge

Because of the foregoing analysis, the claim for constructive discharge due to the sexual harassment allegations is moot and warrants no discussion.

RECOMMENDATION

Therefore, I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: August 18, 2004